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## Current Topics.

### American Law.

IT would be no exaggeration nowadays to class copies of recent American Law Reviews as highly essential imports, in view both of American co-operation with this country in winning the war and her hoped-for co-operation in the future winning of the peace. We have recently received at the offices of this Journal copies of the *New York University Law Quarterly Review* and the *North Carolina Law Review* for November and December, 1940, respectively, and a study of the articles and notes of cases in those reviews enhances the reader's consciousness of the common foundations of the English and the American systems. Moreover such a study cannot but increase the respect in which English lawyers hold American lawyers, judges and legislators. In the *New York University Law Quarterly* we read, in a comment on a recent case, that "the right of privacy is the right of an individual to live without unwarranted revelation to the public of those aspects of his life with which the public is not concerned." In the same review Dr. PERCY H. WINFIELD, the Rouse Ball Professor of English Law at Cambridge University, contributes the last of a series of articles reviewing the Restatement of the Law of Torts undertaken by the American Law Institute. The restatement deals (*inter alia*) with unreasonable and serious interference with another's interest in not having his affairs known to others or his likeness exhibited to the public. That rule, Professor WINFIELD says, is what we should like English law to be, and he refers to the vulgar prying into the personal concerns of people indulged in in this country by a certain section of the press. It is also stimulating to read an American lawyer's statement that there can be little objection to the court's disregard for the classic definitions of such terms as "invitee" or "bare licensee"; many English lawyers would not greatly object to a little modification of this rather illogical distinction. Other points of interest are the similarity of the problems under American Workmen's Compensation Acts to those with which we are familiar, and of the decisions on unreasonableness of municipal bye-laws and ordinances to ours. One fact that emerges with special clarity from a study of these reviews is, as Professor WINFIELD says in his brilliant article, that "some regions of the common law that are as yet *terra incognita* in the English system have been explored and charted by the American courts."

### Reform of the Stock Exchanges.

SOLICITORS are affected by the proposals for the reform of the London and Provincial Stock Exchanges which are contained in a circular issued on 14th February to members of the London Stock Exchange by the Committee for General Purposes. The suggested reforms should come into force on 1st June, 1941. They are not intended as a war measure, for the rising tendency of the cost of conducting Stock Exchange business was somewhat marked before the war. As regards agents, the proposals aim at confining agency to persons and firms who are able to render services of value to the Stock Exchange and so establish a reasonable claim to rebates. With this object in view there will be formed, in addition to the present registers of banks and remisiers, separate registers for (1) attachés (half-commission men); (2) clerks; and (3) persons and firms not eligible for any of the other registers. Persons who wish to be included in the general register must be, or propose to be, professionally or habitually employed in handling Stock Exchange business, and the eligible classes of persons include, *inter alios*, banks and finance houses which are not on the register of banks; firms or companies managing investment trust companies; the Public Trustee and the trustee departments of the banks; solicitors; accountants; professional stockbrokers who are not members of the Associated Stock Exchanges or the Provincial Brokers' Stock Exchange, and who are not domiciled within the postal area of any city or town where there is an Associated Stock Exchange; ex-members and retired attachés and clerks. The registration fee will be £10 10s. per annum and applicants must undertake to observe certain conditions, including that of abiding by the rules of the Stock Exchange, not to return part of their commission to their principals, and not to refer in letter headings, etc., to the fact that their names are on the general register. There is to be a reduction of the rate of rebates in the case of general agents from 33⅓ per cent. to 25 per cent. It is proposed also that the same rates of rebate should be adopted by Associated Stock Exchanges and the Provincial Brokers' Stock Exchange, which should allow rebate only to agents on the registers to be kept in London. Other proposals contemplate the removal of certain causes of misunderstanding that exist in dealings between London and the provinces. It is recognised that the proposed reforms constitute a genuine attempt to reconcile conflicts of interest, and whatever the outcome, solicitors will loyally abide by the new rules.

### The War Damage Bill.

THE statement by the Chancellor of the Exchequer on the last day of the Committee stage of the War Damage Bill that there were formidable arguments against and obstacles to a compulsory scheme for insurance of chattels disappointed those who felt that there were strong arguments in favour of compulsion. He did not, however, reject outright the principle of compulsory insurance, but promised, on behalf of the President of the Board of Trade and himself, to examine the question with an open and unprejudiced mind. If they were obliged to adhere to the voluntary scheme it must be made more attractive from the point of view of encouraging a large number of people to take advantage of it. To lawyers who have become accustomed to the reaction, expressed in the real property legislation of 1925, from the feudal idea that real property should be subject to an entirely different system of law from personal property, it seems just and fair that if there is a compulsory scheme for real property there should be one also for personal property. One speaker compared the contribution towards the compensation for war damage to real property to a special form of taxation, and if false distinctions of nomenclature are dropped that is in substance what the contribution is. Starting from that,

it seems to follow, as speakers in the Debate pointed out, that as the object of a scheme of chattels insurance must be to bring in as many persons as possible there is no objection, administrative or otherwise, to the compulsory principle, any more than there is to compulsory national health insurance, or to compulsory third-party risk insurance in the case of motor vehicles. It is satisfactory that the matter is by no means closed, and that it will be possible on the Report stage to move an amendment which will express the will of the majority of those both in the House and outside who wish to see a fair principle adopted according to which what should be a risk spread among the many should not become the misfortune of the few.

## War Damage to Highways.

ONE of the new clauses inserted on 12th February in the War Damage Bill deals with the question of compensation for war damage to highways. It is proposed that a scheme should be prepared by the Treasury, under which the War Damage Commission shall make payments to highway authorities where damage is done to public highways, or to bridges or viaducts carrying them. The scheme will fix the rates at which county and county borough councils are to contribute towards the expense of making such payments. The contributions will be based on the rateable value of the property in the area and will be payable in five annual instalments. The Minister of Transport is to be empowered to make grants out of the Road Fund to councils in respect of their contributions, such grants not to exceed one-half of the contributions in any case. The scheme is to be embodied in an order which will not be effective until approved by a resolution of the House of Commons. It is also proposed that the grants payable from the Road Fund to local authorities should be met from money provided by Parliament. Ratepayers in heavily bombed areas will feel considerable relief that this burden is to be spread more evenly over the whole of the country and those with property adjoining and underneath highways will expect that suitable machinery will be available to adjust their rights and obligations in relation to those of the highway authorities. The question of local authorities' finances and their difficult position in making the necessary provision in their rates for the right amount in respect of contributions was referred to in the course of debate. It was also stated that the County Councils Association were not in agreement with the principle of the new clause, as they held that highways are of such a national character that the repair of war damage to them should be a national obligation.

## Defamation of Authors.

THE libel action recently successfully brought by Messrs. OSBERT and SACHEVERELL SITWELL and Miss EDITH SITWELL (recorded under our "Recent Decisions" on this page) excited wide public interest, which was not substantially lessened by our present pre-occupations. Mr. HUGH WALPOLE, in a letter to *The Daily Telegraph* of 14th February, expressed the gratitude of authors to the SITWELLS for vindicating their rights, adding that during thirty-five years he had seen one author after another "attacked in terms that no doctor or civil servant or business man would suffer silently." The legal profession cannot but approve a decision which implicitly affirms that although books and plays are the legitimate subject of fair comment (*Thomas* v. *Bradbury Agnew & Co.* [1906] 2 K.B. 62), if the author is himself attacked under the pretext of criticism, he has a right of action (*McLeod* v. *Wakley* (1828), 3 C. & P. 311). It is interesting to note that though ridicule of an author is permissible so far as he is associated with his work, such ridicule must not pursue him into his private life so as to defame him (*Carr* v. *Hood* (1808), 1 Camp. 355). The recent decision inevitably recalls the less successful *cause célèbre* of *Whistler* v. *Ruskin* (*The Times*, 26th and 27th November, 1878), in which the plaintiff obtained from a jury one farthing damages in respect of a statement that his work showed "the ill-educated conceit of the artist" which "so nearly approached the aspect of wilful imposture." The writer also spoke of "cockney impudence" and of a coxcomb asking 200 guineas "for flinging a pot of paint in the public's face." Actors and actresses have been the special target of attack for critics in the past. One popular actress recovered damages against a critic for writing that she "appeared to be biting her toe-nails on the stage." An actor obtained a verdict in *Duplony* v. *Davis* (1886), 3 T.L.R. 184, for a suggestion that he should return to his old profession—a waiter. In fact he had never been a waiter. The golden rule for reviewers is still the statement by COCKBURN, C.J., in *Strauss* v. *Francis* (1866), 15 L.T. 674, that a man who publishes a book challenges criticism, and must submit to it "so long as it is not prompted by malice, or characterised by such reckless disregard of fairness as indicates malice towards the author."

## Family Inheritance.

MR. JUSTICE FARWELL recently made a statement (*The Times*, 14th February) of vital import to those who may be contemplating the invocation of the court's comparatively new jurisdiction under the Inheritance (Family Provision) Act, 1938. Referring to the difficulty of administering the Act, he said that there was really no legal principle concerned in it. What it asked the court to determine was what was the moral duty cast on a man with regard to his family. How any unfortunate judge could say whether some provision ought to be made for a dependent or not, without really knowing the facts, seemed almost impossible to determine. The statements in the affidavits were no doubt true, but the court could not get into the atmosphere of the home as it should if it were to discover the true position. His lordship said that his own tendency in such cases was against interfering unless there was obvious injustice. We suggest respectfully that the jurisdiction is no more difficult to administer than the Fatal Accidents Act, 1846, which provides for the estimation of a figure of compensation for loss of dependency. What the 1938 Act intends, it is submitted, is that that provision should be made by a testator for the maintenance of his dependents which he was legally bound to provide during his life, whether or not in fact he did provide it, but taking into account, of course, the measure of dependency, including the means of the dependent. In other words, dependents must not be left destitute while others with no other claim than that of the testator's possibly capricious favour take the bulk of the estate. A similar emphasis on "adequate provision for the proper maintenance and support" is to be observed in the [New Zealand] Family Protection Act, 1908, which served as a model for the English statute. This principle of maintenance was further emphasised by the Privy Council in *Allardice* v. *Allardice* [1911] A.C. 730, 734. The English statute has gone further than the New Zealand Act in specifying what circumstances the court should take into account (s. 1 (5), (6) and (7)), and information on such matters as the nature of the property left, the property of the applicant, his conduct towards the testator, and the testator's reasons for making the dispositions which he did, should provide the court with sufficient material on which to arrive at a decision.

## Recent Decisions.

In *In re Joslyn, deceased; Joslyn* v. *Murch*, on 6th February (*The Times*, 7th February), Mr. Justice FARWELL dealt with a summons under the Inheritance (Family Provision) Act, 1938, asking that reasonable provision should be made for the maintenance of the wife of the deceased out of his estate. His lordship held that he was entitled to determine that if the estate was so small that it was not practically possible to provide for the wife, who had borne him a child that had died young, and for the other woman to whom he was not married but who had borne him two children, and if there was some provision already in existence for the wife, his duty was to make what little provision he could for the other woman and her children.

In *Sitwell and Others* v. *Co-operative Press, Ltd., and Another*, on 10th February (*The Times*, 11th February), Mr. Justice CASSELS held that it was defamatory to say of authors that energy and self-assurance pushed them into a position which their merits could not have won, and that oblivion had claimed them. His lordship further held that the defendants had failed to establish the defence of fair comment, and awarded each of the plaintiffs £350 damages.

In *Luis de Ridder, Ltda.* v. *Andre et Cie. S.A. Lausanne*, on 11th February (*The Times*, 12th February), the Lord Chief Justice considered contracts for the sale of 1,000 tons of maize, shipment to be made from Buenos Aires in May, 1940, c.i.f. Antwerp, in the form of the London Corn Trade Association's contract, on which was the common appropriation clause but to which was attached a special clause providing that all notices must be sent to the buyers' agents at Antwerp, and that the documents must be presented to the agents there for payment. His lordship held that the clause was intended to be a condition precedent and to override the ordinary appropriation clause.

In *Yelland* v. *Powell Duffryn Associated Collieries, Ltd.*, on 12th February (*The Times*, 13th February), the Court of Appeal (MACKINNON, LUXMOORE and DU PARCQ, L.JJ.) dismissed an appeal by two widows who had been awarded £700 and £250 respectively under the Law Reform (Miscellaneous Provisions) Act, 1934, and £5 each under the Fatal Accidents Act, 1846. Their lordships held that a sum recovered by a widow under the Act of 1934 must be taken into account in estimating under the Fatal Accidents Act what had been her pecuniary loss as a dependent from her husband's death. Leave was given to appeal to the House of Lords.

## Criminal Law and Practice.

### Pedestrian Crossings: Free and Uninterrupted Passage.

THE question whether the pedestrian crossing regulations can be said to be generally in favour of the pedestrian is one which the motorist may be expected to contest vigorously whenever it is raised, in or out of court. In *R.* v. *Emmens*, at the Thames Police Court on 13th February, the stipendiary magistrate gave it as his view that the pedestrian was favoured under the regulations.

The facts before the court were that a youth had entered Commercial Road, which runs east and west, from a side street on the north side and stepped on to a pedestrian crossing running from the side street to another side street on the south side. A trolley-bus had just gone up Commercial Road in an easterly direction, and the youth emerged, as he said, about 10 feet behind the rear of the trolley-bus. He got a little over half-way across the crossing and then saw the defendant's lorry about 40 yards away. He stepped back, then forward and then back again, and was knocked down by the front nearside wheel of the car. He was not seriously hurt. The defendant's speed, it was agreed, was not excessive, being about 18 miles an hour, but a trolley-bus driver who had been driving behind the trolley-bus already mentioned said that the defendant was 18 yards from the crossing when the youth was half-way across. The defendant said that the youth emerged from behind a trolley-bus when he (the defendant) was only 20 feet from the crossing. The stipendiary magistrate convicted the defendant of a breach of the regulations, and fined him 40s. and one guinea costs.

It is quite true that, to use the words of Scott, L.J., in *Chisholm* v. *London Passenger Transport Board* [1939] 1 K.B. 426, "no penalty is imposed on the pedestrian for embarrassing approaching vehicles." None the less, that case, which was cited to the magistrate in *R.* v. *Emmens*, shows that the favour shown to the pedestrian does not extend to penalising the motorist whose behaviour under particular circumstances is unimpeachable. The offence with which motorists are most frequently charged under the regulations is that of failure to "allow free and uninterrupted passage to any foot passenger who is on the carriageway at such crossing." The regulation in question, which relates to uncontrolled crossings, goes on to provide: "and every such foot passenger shall have precedence over all vehicular traffic at such crossing." The regulation relating to controlled crossings, which was in question in *Chisholm's Case*, does not contain these words.

In *Chisholm's Case* the pedestrian stepped on to the crossing when the motor-bus which hit him was such a short distance away that it seemed to one witness as though he was racing to beat the motor-bus over the crossing. The distance was actually some 20 to 30 feet from the crossing. Some of the observations of the learned lords justices throw a strong light on the question of the motorist's criminal liability. Scott, L.J., said: "A pedestrian, even if willing to risk his own life, has no right suddenly to embarrass a driver who is driving at a reasonable speed at which he can stop quickly. Such a right would involve a duty upon every car to slow down to almost a walking pace at every pedestrian crossing, and this would reduce the flow of traffic in a busy town to an absurdity . . . upon a reasonable interval occurring—say 50 to 70 yards—a waiting pedestrian is, in my view, entitled to step on to the crossing and cross."

"If the car," said MacKinnon, L.J., "is coming along at the reasonable rate of $x$ miles an hour, at which it can be stopped in $y$ feet, for a pedestrian to walk in front of it when it is less than $y$ feet from him, and he can plainly see it, it is the acme of recklessness." His lordship held that there was no breach of the regulation if the pedestrian entered the crossing when the car was $y$ feet or less away (i.e., the distance in which it could be stopped). It should be observed that the length of the omnibus in this case was 27 feet.

The fact that du Parcq, L.J., differed in a long dissenting judgment, mainly on fact, demonstrates the difficulty of deciding cases in the many and varying circumstances in which a pedestrian may be hit by a motor vehicle on a pedestrian crossing. On the legal maxim "*lex non cogit ad impossibilia*," du Parcq, L.J., substantially agreed with the proposition that if a driver of a motor vehicle could see no pedestrian on the crossing down to the last moment when he could reasonably expect a foot passenger to be there, he could not be held to be guilty of a breach of the regulations.

What the court found in *Chisholm's Case* adds just what was needed to make quite clear the meaning of reg. 3 of the Pedestrian Crossing Places (Traffic) Provisional Regulations, 1935: "The driver of every vehicle approaching a crossing shall, unless he can see that there is no foot-passenger thereon, proceed at such a speed as to be able if necessary to stop before reaching such crossing." This does not quite amount to saying, as MacKinnon, L.J., said, that once the driver has driven his car nearer to the crossing than $y$ feet (the distance in which he can pull up) without seeing a pedestrian on the crossing, he may proceed without slackening speed and there will be no breach of regs. 4 and 5, with which reg. 3 must be read. However that has now been expressly held, and, as MacKinnon, L.J., said, "reg. 3 cannot have been intended to give pedestrians licence to be utterly reckless."

Magistrates therefore must not decide these cases on the somewhat vague principle that the regulations favour the pedestrian, but should be careful to ascertain to what extent they favour the pedestrian and to what extent they protect the motorist. *Chisholm's Case* is directly in point in considering charges of breach of the regulations, and therefore among the most material questions for the magistrate to consider are (1) the speed of the oncoming vehicle, (2) its length and horse-power, (3) its distance from the crossing when the pedestrian stepped on to the crossing, and of course (4) to what extent both the pedestrian and the motorist had their observation centred on the crossing and the road. If the answers to these questions are clear, there should be no difficulty in arriving at a just decision.

## Principles of Interpretation and Emergency Legislation.

So many of the current problems of the practitioner arise from statutes and regulations that the legal landscape has an unfamiliar look and the common law signposts to decided cases are of no assistance. It is guides to the intention of the Legislature which are needed: the technique of statutory interpretation has become a vital matter. Many principles of construction have at different times been laid down but they are not always very clear and are sometimes contradictory. But the way in which they have been applied to the legislation of the last war can be safely looked to in this.

The present vast bulk of subordinate legislation, both regulations and orders, must, it seems, be interpreted in accordance with the same rules as Acts of Parliament. Section 31 of the Interpretation Act, 1889, provides that statutory regulations, bye-laws, etc., "shall, unless the contrary intention appears, have the same respective meanings as in the Act conferring the power" to make the regulations. If the regulation is not *ultra vires* it carries the same authority as statute and hence if there is a conflict between it and a section of the parent Act, it must be dealt with in the same spirit as a conflict between two sections of the Act would be dealt with. But if reconciliation is impossible, the subordinate provision must give way, and probably the rule would be treated as subordinate to the section (per Lord Herschell, L.C., in *Institute of Patent Agents* v. *Lockwood* [1894] A.C. 360). The truth of this view is assumed in s. 1 (4) of the Emergency Powers (Defence) Act, 1939: any defence regulation, order, etc., made under the Act "shall have effect notwithstanding anything inconsistent therewith contained in any enactment *other than* this Act."

It has often been said that the fundamental or cardinal rule of construction is to give the words of the statute their plain, literal, grammatical meaning. But this rule will, of itself, settle few serious conflicts of possible interpretations, and is at variance with the rule of Coke, that it is the duty of the judge to make such construction of a statute as shall suppress the mischief and advance the remedy (*Heydon's Case*, 3 Rep. 7*b*). Under the rule in *Heydon's Case*, where the usual meaning of the language falls short of the whole object of the Legislature, a more extended meaning may be attributed to the words, if they are fairly susceptible of it. *Heydon's Case* may, indeed, justify the very wide principle of interpretation of war legislation advanced by Darling, J., in *Michaels* v. *Block* (1918), 34 T.L.R. 438. He said: "Regulation 13 is part of legislation passed hurriedly while the country is at war, and I think I ought to construe it according to the maxim, *salus populi suprema lex*. . . . In the public interest, I think the word should be construed liberally." It was held that "behaviour," in a regulation authorising the arrest without warrant of a person whose behaviour gave reasonable grounds for suspecting him of certain activities, included all acts of which information had been given to the competent authority and was not restricted to matters actually witnessed by the informer. The same result would probably have been reached under the ordinary rule of interpretation, and Darling, J.'s rule for construing war-time legislation would almost certainly not be accepted at the present day. There is, indeed, authority for the opposite rule of construction, namely, that penal statutes

ought to be construed strictly, i.e., in favour of the subject. But little is heard of this rule nowadays. As Lord Atkinson said in *R.* v. *Halliday* [1917] A.C. 260, 274, the leading case disallowing a writ of *habeas corpus* to a person interned under defence regulations: "I must say that I never could appreciate the contention that statutes invading the liberty of the subject should be construed after one manner, and statutes not invading it after another, that certain words should in the first class have a meaning put upon them different from what the same words would have put upon them when used in the second. I think the tribunal whose duty it is to interpret a statute of the one class or the other should endeavour to find out what, according to the well-known rules and principles of construction, the statute means, and if the meaning be clear to apply it in that sense. Should the statute be ambiguous, equally susceptible of two meanings, one leading to the invasion of the liberty of the subject, and the other not, it may well be that the latter should be preferred on the ground of the presumed intention of the Legislature not to interfere with it. That is a wholly different matter." No sounder guide can be found than this opinion of Lord Atkinson: it is based on the "literal," not the "liberal," principle and rejects the dangerously wide doctrine of Darling, J.

Even emergency legislation must not be interpreted solely with respect to the public interest, for private interests may be also affected. In *Minister of Munitions* v. *Mackrill* [1920] 3 K.B. 513, it was held that the court had to consider not only whether a proposed order for compulsory purchase by the Minister of Munitions was expedient from a public point of view, but also whether it would work a hardship and injustice to the owner if he were deprived of his property; and in the circumstances the fact that the respondent would obtain compensation was not sufficient to justify the court giving its consent to the proposed order. In fact, the Ministry wished to buy the land in order to resell it, together with the buildings which had been erected thereon during temporary requisition of the land; in this way a substantial loss to the State would, admittedly, have been avoided, but the respondent would have been seriously hampered in his business, as there was no other suitable land within a reasonable distance. In this case there was no infraction of the "literal" principle because a forced sale of the subject's property was only possible after a hearing and an order of the Railway and Canal Commissioners, subject to the review of the court; the way was therefore open for a balancing of competing public and private interests. But in *E. H. Jones (Machine Tools), Ltd.* v. *Farrell* (1940), 3 All E.R. 608, the decision went in favour of the subject, although the court had no power to scrutinise the substance of the order which took over the plaintiff's business. It was held that s. 1 (2) of the Emergency Powers (Defence) Act, 1939, authorising the making of regulations to take "possession and control" of an undertaking did not cover the "carrying on" of an undertaking, and hence a regulation purporting to authorise a Government Department to "carry on" an undertaking was *ultra vires*. An injunction to prevent interference with the control and management of the undertaking was granted. The doctrine of *Heydon's Case* would have led to a different conclusion.

But the "literal" principle must not be taken to import a strict etymological interpretation. "Etymology is a very unsafe guide to meaning," declared Wickens, V.-C., in *Hext* v. *Gill*, 7 Ch. App., 705*n*; Jessel, M.R., did not think so in *Russell* v. *Russell*, 14 Ch. D. 471, 479, with respect to the important word "deem." He said that one meaning it bore was "to adjudge or decide": "In fact, the old word 'deemster' or 'dempster' was the name for judge. To 'deem' at one time meant to decide judicially. Consequently, taking that meaning," partners who had power to expel a member of the partnership whose conduct they deemed suspicious or unworthy were required to make "a decision not merely depending upon opinion, but depending on inquiry." This ingenious and far-fetched conclusion would be disturbing if it were applied to the many cases under current statutes and regulations in which the executive is given power to act if they "deem it proper," "deem it expedient," "think proper," etc. But Jessel, M.R.'s extreme etymological interpretation was expressly rejected in *R.* v. *Leman St. Police Station Inspector, ex parte Venicoff* [1920] 3 K.B. 72, 80, in which it was held that the Home Secretary's deportation order made under a deportation order depending on the Aliens Act could not be questioned by *certiorari*, and the order was not *ultra vires* on the ground of being against natural justice in denying a "hearing" to the applicant. "As soon as we come to the conclusion that this is an executive act left to the Home Secretary and is not the act of a judicial tribunal, the argument fails" (*per* Lord Reading, C.J.).

The plain meaning of an Act of Parliament has been followed in spite of a different interpretation which had been put upon it by executive practice in awarding compensation for war losses (*A and B Taxis, Ltd.* v. *Secretary of State for Air* [1922] 2 K.B. 328 (C.A.). Under an Indemnity Act there was a right of compensation for "direct loss or damage incurred by reason of interference with property or premises." It was held that the damage was "direct" if it was within the rules of remoteness of damage for the purposes of a civil action, as expounded in *Weld-Blundell* v. *Stephens* [1920] A.C. 956, even though a Losses Commission had habitually understood and acted upon a narrower meaning. Duke, President, said (p. 345): "It may be that up to the passing of the Indemnity Act, 1920, it had been the practice of the Defence of the Realm Losses Commission to award something less than the direct loss, but it is impossible, in construing an Act of Parliament which prescribes the principles to be applied, to give any meaning to the words of the Act other than the plain meaning they would ordinarily bear, in deference to a suggestion that the practice of the Losses Commission has fallen short of the principles expressly laid down by the Legislature."

In view of the extensive judicial or quasi-judicial powers granted to wartime tribunals, boards, committees and other bodies, the presumption against ousting established, and creating new, jurisdictions is of importance at the present time. There is extensive authority for this principle in interpreting statutes which set up new bodies. It seems to be the basis of the decision in *Mee* v. *Toone* [1940] 1 K.B. 638. The respondent had failed to comply with a billeting notice and had appealed to the special tribunal set up for the purpose of hearing such appeals, but, before her appeal could be heard, she was prosecuted before the justices, who took the view that the regulations should not be read as compelling obedience to a notice before the tribunal had considered the case. On appeal to a Divisional Court it was held that a billeting notice must be complied with irrespective of an appeal to the tribunal; the jurisdiction of the justices was not temporarily suspended and therefore the case was remitted to them to determine. The regulations in no way provided for the suspension of the notice, and the presumption against ousting an established jurisdiction was capable of settling any doubt there might be. But Charles, J., seemed inclined to the wider principle of the policy of the statute: "The policy of these regulations is quite clear. They are regulations of emergency, and their object is to secure the safety of tens of thousands of evacuated children, although here and there hard and difficult cases may result" (p. 642). An established jurisdiction was, however, held to be excluded in *Hulme* v. *Ferranti, Ltd.* [1918] 2 K.B. 426, in which it was decided that a county court had no jurisdiction to entertain an action by a munition worker for breach of contract of service inasmuch as a specified tribunal had been provided by the Munitions of War Acts to deal with breaches of obligations thereunder. In this case, instead of the presumption mentioned above, another principle was applied; it has been described by Lord Halsbury, L.C., whose words were adopted: "The principle that where a specific remedy is given by a statute, it thereby deprives the person who insists upon a remedy of any other form of remedy than that given by the statute, is one which is very familiar and which runs through the law" (*Pasmore* v. *Oswaldtwistle Urban Council* [1898] A.C. 387, 394). This principle seems to conflict with the presumption and it must often be difficult to attempt to forecast which of them the courts will favour in any given case.

Many identical terms are to be found in more than one provision of the emergency legislation, but it is clear that the definition in one Act does not bind the court to interpret the same term in the same way in another Act. *Bickerdike* v. *Lucy* [1920] 1 K.B. 707, is an interesting authority for this proposition. The court did in fact hold that the expression "market garden" in the Corn Production Act, 1917, bore the same meaning as its definition in the Agricultural Holdings Act, 1908, but only for the reason that in the words of Lord Reading, C.J., "the definition in the Act of 1908 appropriately expresses what I understand to be the meaning of the term as used in the Act of 1917." Counsel had argued that the purpose of the two Acts was different, and had made out a good case for saying that the policy of the later Act required not the same but a wider meaning than the earlier. The narrower meaning did not cover the market garden of an "amateur" market gardener who, chiefly for pleasure, used part of his land for the purpose, even though he sold the produce and employed a staff of workers and the result was that they were not entitled to a statutory minimum wage for agricultural workmen; though as the object of the Act was to provide a minimum wage for workmen doing a certain kind of work, it could be said to be irrelevant to consider whether the employer thought of the market garden as a

business or a pleasure. But the purpose of the Act of 1908 was to fix compensation for improvements payable to the outgoing tenant of a holding which he occupied as a business. "Be that as it may," said the Lord Chief Justice in rejecting what was, after all, only the doctrine of *Heydon's Case*, "I am satisfied that the meaning of the expression 'market garden' in both Acts is the same" (p. 710).

## A Conveyancer's Diary.

### 1940 Chancery.—V.

In *Re Sykes* [1940] Ch. 490, the testator gave his estate to his trustees on the usual trusts for conversion and to pay the income to his widow for life. He gave the capital to his two sons, and directed that one of them should have an option to purchase certain shares, part of the estate, at par, on the death of the wife or on any earlier occasion when the trustees were proceeding to convert the estate. The testator died in 1916 and his wife in May, 1939. The shares were never sold, but in 1932 the son purported to assign the option to certain trustees. The son died only a month after his mother, without ever having exercised the option. Both the trustees of the 1932 assignment and the son's personal representatives attempted to exercise the option, and the proceedings were brought to test the validity of the respective notices which they served. Now, unless we happened to have met the point earlier, I think most of us would have had little doubt that since an option is a form of property, and since there were no words cutting down the quantum of the interest in the option given to the son, he must have been taken to have had an absolute interest in it, which would have passed to the 1932 trustees, making the option exercisable by them. But that was not the result of the case. In "Jarman," 7th ed., p. 73, there is a statement that an option to purchase given by will is *prima facie* personal to the donee and does not pass to his executors at his death (*Re Cousins*, 30 Ch. D. 203, is cited in support of this proposition). It was contended on behalf of those claiming under the son that *Re Cousins* was not authority for any general principle and turned entirely on the circumstances. Bennett, J., stated that at one stage he inclined to this view, but that he had finally come to the conclusion that *Re Cousins* did justify the observation in "Jarman." That being so, the option was *prima facie* personal and there was nothing in the will of Sykes to allow the court to displace the primary rule. If one reads *Re Cousins*, however, it is not at all easy to see on what Bennett, J., based his decision. The facts were very peculiar in that the testamentary option concerned an hotel, the donee being the testator's son and owner of another hotel; it was clearly a case where the personal element was to the fore, as the management of hotels is one where much turns on it, and as the son already had one hotel in the district it was obviously desirable that the family's two hotels should be run together and not in rivalry. I think the important judgment, from the point of view of principle, was that of Cotton, L.J., who indicated that, although an option is property, it is not a necessary incident of property to be capable of transmission to executors. But all the members of the Court of Appeal relied greatly on the peculiarities of the facts, and it seems to be going rather far to erect the case into an authority for any proposition so sweeping as that in "Jarman." Of course, a great many options are obviously only personal, as where a testator gives one particular child a right to purchase the family house, but it might quite well be in other cases that the option is intended to confer value on the donee, especially where one is given a right to purchase stocks or shares on advantageous terms. It is not clear why there should be a legal presumption that all testamentary options are personal, and I cannot help wishing that there may soon be a case where the matter of principle is thoroughly discussed by the Court of Appeal. In the meantime, practitioners will do well to remember *Re Sykes* and *Re Cousins* and so frame their drafts of testamentary options as to leave no doubt whether or not they intend them to be purely personal.

At present there is little or no building activity, but when the war is over it is sure to begin on a great scale, especially in towns. When that day comes Settled Land Act trustees will be assisted by *Re Paddington Estate* [1940] Ch. 43, where Bennett, J., considered the scope of the power to apply capital moneys on "the provision of small dwellings, either by means of building new buildings or by means of the reconstruction, enlargement, or improvement of existing buildings if that provision of small dwellings is, in the opinion of the court, not injurious to the settled land or is agreed to by the tenant for life and the trustees of the settlement" (S.L.A., Sched. III, para. (xxii)). The Settled Land Act powers are mostly thought of as applying to landed estates in the country, but they can, of course, equally apply in towns, and Bennett, J., decided that para. (xxii) would authorise the building, in a suitable case, of blocks of flats, each flat of a size suitable to be separately occupied by a workman and his family. As the learned judge said, each such flat would be a separate "small dwelling." This decision is not only one of good sense, but is in line with principle, since the court has often held that the erection of a block of flats infringes a covenant against user otherwise than as a (or one) private dwelling-house, since each flat is a dwelling-house (*Rogers* v. *Hosegood* [1900] 2 Ch. 388; *Berton* v. *Alliance Economic Investment Co.* [1922] 1 K.B. 742; cf. *Barton* v. *Keeble* [1928] Ch. 517).

One of the more controversial decisions of 1939 was that of Bennett, J., in *Re Cowlishaw* [1939] Ch. 654, where it was held that the gift of an annuity "free of all deductions whatsoever" gave the annuity free of income tax, on the ground that there was nothing else but income tax for the word "deductions" to refer to, since a separate provision freed it from legacy duty. With all respect, I doubt whether this decision was regarded by the profession at the time as laying down any principle, and I stated in the "Diary" of 23rd December, 1939, that the learned judge had "succeeded in discovering a context which allowed him to hold" that the annuity was free of income tax. The decision has now been distinguished by Simonds, J., in *Re Wells* [1940] Ch. 411, on grounds so slender as to make it reasonably clear that *Re Cowlishaw* is not likely to be followed. Here also various annuities were collectively given free of legacy duty, and in the case of the particular annuity it was also stated that it was to be paid "free of all deductions." Thus the wording of the will differed in nothing from that of the Cowlishaw will. The only possible point of distinction was that Wells appointed the Public Trustee to be his executor and trustee, which Cowlishaw did not, and that Wells died before the date of *Re Riddell* [1936] Ch. 747, where it was decided that the Public Trustee's income fee was to be dealt with as a testamentary expense. At the date of Wells' death, therefore, it was possible to say that the word "deductions" could refer to this income fee, which would then have otherwise been deducted from the annuity. Such an argument is hardly impressive. Simonds, J., must really have been taken to have decided *Re Wells* differently from the decision of Bennett, J., in *Re Cowlishaw* because practically no authority was cited to the latter learned judge, whereas Simonds, J., as he pointed out in his judgment, had had the advantage of very full citations. Putting it quite bluntly, therefore, *Re Cowlishaw* must be treated as binding only on its own facts, while *Re Wells* states the general rule. This further development serves to point my suggestion in the "Diary" referred to above that the draftsman should always say expressly whether or not he means a testamentary annuity to be free of income tax.

## Landlord and Tenant Notebook.

### Dwelling-house let to Ex-employee Controlled.

THE decision in the recent case of *Read* v. *Gordon* (p. 93 of this issue), in which a tenant succeeded on appeal in establishing that premises were within the Rent, etc., Restrictions Acts, actually depended on a point of common law. As an aid to discussion, it will be convenient to set out the important facts in chronological form. They are:—

1900. Dwelling-house let to defendant by employer and in consequence of the employment.

1905. Landlord-employer dies; daughter succeeds, both capacities.

1935. Daughter dies; her executors discontinue employment but defendant continues occupation at same rent.

1940. Plaintiff buys reversion, serves notice to quit, and issues summons for possession.

The defendant relied on the protection of the Rent, etc., Restrictions Acts, the property being *prima facie* controlled. The plaintiff relied on a provision, in Sched. I (*g*) (1) of the 1933 Act, which entitles the court, if it considered it reasonable, to make an order for possession without proof of alternative accommodation. The provision runs: "If the tenant was in the employment of the landlord or a former landlord, and the dwelling-house *was let* to him in consequence of that employment and he has ceased to be in that employment."

The county court judge held, in effect, that three necessary conditions had been fulfilled: the defendant had been employed by a former landlord; that landlord had let the premises to him in consequence of the employment; and the employment had ceased. The Court of Appeal reversed this decision on the ground that the tenancy terminated by the notice to quit was a tenancy which commenced not in 1900 but in 1935, when the executors of the original landlord's daughter "allowed" the defendant to stay on.

This means construing the original tenancy agreement as so closely connected with the contract of employment that determination of the latter would necessarily determine the former, either by operating as notice to quit or as a surrender. A new tenancy agreement was then made, and the provisions of Sched. I (*g*) (1) did not touch the new tenancy.

Any criticism likely to be levelled at this reasoning would probably be on these lines: the terms of a tenancy *can* be varied without terminating the tenancy. But the distinction is often a fine one, as was shown by *Holme* v. *Brunskill* (1877), 3 Q.B.D. 495 (C.A.). In that case a surety who had guaranteed performance of a particular covenant by a tenant farmer was sued on his guarantee, and his defence included the plea that the tenancy had been surrendered. It was a yearly tenancy, and in the course of its fourth year, after the plaintiff had given the tenant an invalid notice to quit, an interview took place between them at which the tenant agreed to give up one specified field and the use of a named barn, the yearly rent being reduced by £10. Denman, J., held: "Any such alteration of the holding as the diminution of the farm by seven acres, and a reduction of the rent by £10, however unprejudicial it may, in fact, have been to the sureties, is, on the face of it, such an alteration in the agreement between the plaintiff and the principal as necessarily to make it a new and different agreement . . ." On appeal, Cotton, Thesiger and Brett, L.JJ., while disagreeing on other points, were unanimous in holding that there had been no new tenancy. "Notwithstanding the surrender to the landlord of part of the land demised, the former tenancy of the remainder of the farm continued." "I do not think there was any new tenancy, and I ground that view on the fact of the finding of the jury, amongst other things, that the alteration was immaterial [i.e., as regards the tenant's capacity to observe the covenant]." I do not, of course, suggest that it could follow from this case that the cessation of an employment which went with a tenancy, followed by occupation of the same premises by the ex-employee at the same rent, ought not to be considered as effecting the determination of the old tenancy and the grant of a new one.

## Decontrol by Possession.

Since the repeal of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1938, s. 3 (2), by the Rent and Mortgage Interest Restrictions Act, 1939, s. 2, the question of "decontrol by possession," which gave rise to the recent case of *Major* v. *Mouser* (1941), 85 SOL. J. 45, has become an academic one; at all events till further notice. But, apart from some useful observations by du Parcq, L.J., on procedure in Rent Act cases, which I shall discuss in a later "Notebook," the result serves to recall the difficulty of interpreting the words "actual possession" in the 1923 Act, s. 2 (1) and (3), by the former of which this method of decontrol by coming into possession was first introduced. The Legislature, perhaps aware of the fact that "possession" takes up some four pages of Stroud's "Judicial Dictionary," enacted by subs. (3): "for the purposes of this section, 'possession' shall be construed as meaning 'actual possession,' and a landlord shall not be deemed to have come into possession by reason of a change of tenancy made with his consent." Despite this explicitness, we have had *Hall* v. *Rogers* (1925), 133 L.T. 44; *Jewish Maternity Home Trustees* v. *Garfinkle* (1926), 95 L.J.K.B. 766; *Kearns* v. *Bedford* (1934), 50 T.L.R. 348; and now *Major* v. *Mouser*. The position in *Hall* v. *Rogers* was that a tenant abandoned controlled premises, the landlord's agent looked into and walked round them, and ultimately let them to the defendant at a rent exceeding the controlled rent. The Divisional Court held that the statute deliberately rejected the legal right to possession and required "actual control or apparent dominion in fact," and decided that there was evidence on which the county court judge could find, as he had, that this requirement had not been satisfied. In *Jewish Maternity Home Trustees* v. *Garfinkle*, however, in which an outgoing tenant had handed the key to the trustees' agent, who had let to the defendant some time after, the Divisional Court, reversing the decision of the county court, ridiculed the idea that it was necessary for one of the trustees to go and sleep in the house in order to decontrol it. In *Kearns* v. *Bedford* two days had elapsed before the landlord's agent, having received the key from the outgoer, let the dwelling to the defendant, who paid a week's rent in advance, but as from the date when the old tenant left; on this, the county court held that the premises were not decontrolled, but the Divisional Court pointed out that it was facts that mattered and reversed his decision. *Major* v. *Mouser* is again a case in which an appeal has been allowed, the county court judge having taken the fallacious view that the right to possession which accrued to the landlord on the death of a statutory tenant was sufficient to effect decontrol.

# Our County Court Letter.

## The Contracts of Hairdressers.

IN *Abramson* v. *Shippam*, recently heard at Maidstone County Court, the claim was for £100 as damages for breach of contract. The plaintiff's case was that, in answer to an advertisement, he had applied for a position as hairdresser's assistant to the defendant. Having seen the plaintiff cut the hair of two or three men, the defendant expressed his satisfaction. A week later the plaintiff accordingly left his tools with the defendant, and put in an appearance (with the intention of starting in his new situation) four days later. The defendant then announced, however, that he had told the plaintiff (by telegram and letter) not to come. The plaintiff was accordingly unemployed for a fortnight, and had been deprived by the defendant of a situation which was understood to be for the duration of the war. The defendant's case was that, being about to join the Army, he required someone to manage the business. At first he thought the plaintiff would be suitable, but he only engaged him for a week on trial, and then decided that he was not the man for the position. His Honour Judge Clements observed that the plaintiff would obviously not have left a place at which he had resided for thirty years in order to go on a week's trial. There had been a breach of contract, but the damages were exaggerated. The plaintiff was only out of work a fortnight, and judgment was given in his favour for £20, with 13s. costs, payable as to £3 forthwith and the balance at £1 a month.

## Validity of Payment by Bankrupt.

IN a recent case at Shrewsbury County Court (*In re Bowdler; The Trustee* v. *Hawkins*) an application was made for a declaration that a payment of £614 11s. 8d. by the bankrupt to the respondent on the 26th September, 1932, was void, owing to the insolvency which led to the bankruptcy adjudication on the 13th May, 1939. The case for the applicant was that the respondent had acted as the friend and financial adviser of the bankrupt's late father-in-law, one Berrow. A son of Berrow had died during the last war, leaving an investment which Berrow had made up to £2,000. This was converted into savings certificates, and the amount was divided equally among the two sisters of the deceased and their husbands, viz., £500 per person. In 1932, however, owing to Berrow's financial position, the certificates were cashed for his benefit, the value of each share then being £614 11s. 8d. The respondent had acted as intermediary in the transaction, and on Berrow's death in 1936 there was no balance available for the payment of his debts. The case for the respondent was that he had interviewed all the donees of the savings certificates, and they had agreed to the encashment of the certificates for the benefit of Berrow. His Honour Judge Samuel, K.C., observed that the transaction had been carried out for the benefit of Berrow. The respondent had not derived any profit therefrom, but this circuitous procedure had necessitated an investigation by the trustee. The application was dismissed, and no order for repayment was made, the respondent being awarded costs.

## Interpleader Action.

IN a recent case at Bournemouth County Court (*Swindell* v. *Swindell; Salisbury, claimant*), the plaintiff had recovered judgment for arrears of maintenance under a separation agreement. Execution had been levied upon the goods of the defendant's hairdressing business, but the value of the goods was claimed by the claimant. Her case was that the defendant had sold her the business in October, 1940, she having previously lent him £34 on the 17th November, 1939; £9 10s. on the 20th January, 1940; and £42 subsequently. The consideration for the purchase was £450, and the claimant had paid off the business overdraft of £72 4s. 8d. The balance was secured by two promissory notes, payable in the first and second years of the claimant's ownership of the business. The defendant had since been employed by the claimant in the business at a salary of £2 10s. a week. Although she had paid some of the accounts, the claimant was not responsible for the defendant's liabilities, and had merely paid certain of his debts in reduction of her own liability on the promissory notes. The case for the execution creditor was that the defendant and the claimant had conspired to defraud the creditors of the defendant. The alleged sale of the business was carried out with this object, and the defendant had paid various sums into the bank account of the claimant, who had had little money of her own. Prior to being employed in the business at £1 5s. a week, the claimant had been a nursemaid in the employment of the other parties. It was held that the alleged sale of the business was entirely bogus, and judgment was given for the execution creditor, with costs.

# Practice Notes.

## Leave to Proceed ; Leave to Appeal ; Stay.

In *Metropolitan Real & General Property Trust, Ltd.* v. *Slaters & Bodega, Ltd.* (1941), 57 T.L.R. 227, the plaintiffs had sued the defendants for £200 rent. The defendants are caterers and restaurant proprietors ; their business had been affected by the war. On 24th October, 1940, the master gave the plaintiffs leave to sign final judgment and leave to proceed to enforce the judgment. He suspended leave to proceed, on terms, since the defendants could only pay 25 per cent. of the rents due. On appeal, Wrottesley, J., gave the plaintiffs unconditional leave to proceed. He granted leave to appeal, however, but he did not direct a stay of execution. Between this order and the hearing before the Court of Appeal, the defendants paid the amount of the claim. By reason of this payment, the basis of the appeal had gone ; the court, therefore, had no alternative but to dismiss the appeal.

Sir Wilfrid Greene, M.R., however, made an important pronouncement—in which Clauson and Goddard, L.JJ., concurred—relating to applications under the Courts (Emergency Powers) Act, 1939, where there is a *judgment for money* :—

> " Where leave to appeal is given to the debtor it should follow as a matter of course, and should be expressly stated in the order, that there is to be a stay of execution pending the appeal. If that is not given, the debtor is under compulsion to pay, and once he pays the judgment is satisfied and the substratum of his case on appeal is irretrievably destroyed. It therefore follows . . . that in a case where leave to appeal is given to the debtor he should automatically have a stay of execution in order that his appeal may be determined when it comes into court " (at p. 228).

## Court appointing Umpire.

A CONTRACT for the sale of a steamer contained a provision that any dispute thereunder should be referred to arbitration in London, each party appointing an arbitrator ; if the arbitrators could not agree, they were to appoint an umpire. The applicant appointed an arbitrator and gave notice to the respondents, calling on them to appoint an arbitrator within twenty-one days. They notified the applicant of this appointment of an arbitrator without prejudice, they stated, to proceedings pending between the parties in Greece, or to their contention that the contract had been cancelled. A month later the applicant served notice on the arbitrators calling on them, within the Arbitration Act, 1889, s. 5, to appoint an umpire. No umpire was appointed. The applicant applied to the master for an appointment, but the application was dismissed. That decision Cassels, J., affirmed. The Divisional Court, however, reversed his order ; an appeal to the Court of Appeal was dismissed (*Iossifoglu* v. *Coumantaros and Others* (1940), 57 T.L.R. 170).

In his affidavit before the Divisional Court, C's arbitrator stated that the case did not fall within s. 5, because the arbitrators had not disagreed. An action had been brought in Greece by C against I claiming cancellation of the contract ; this action was proceeding. For this reason he thought that this arbitration was undesirable. I's arbitrator, on the other hand, stated in his affidavit that he had repeatedly tried to arrange an interview with C's arbitrator in order to discuss the case ; I wished for a speedy award. I maintained that since the contract provided for arbitration in London, and since C had in fact appointed an arbitrator, the Greek courts had no jurisdiction. He had instructed a solicitor in the Greek proceedings, simply because he was a Greek subject and was within the jurisdiction of the Greek courts. I's arbitrator subsequently suggested the appointment of an umpire to give directions ; C's arbitrator refused to agree.

Lord Hewart, C.J., said that there was a dispute between the arbitrators ; this failure to agree was a disagreement ; an umpire should have been appointed by the arbitrators. Hawke, J., *dubitante*, thought that, on the whole, this was the more convenient course. Humphreys, J., declared that there was a disagreement between the two arbitrators, and the contract provided that in such event they should appoint an umpire.

Scott, MacKinnon and Luxmoore, L.JJ., agreed, particularly with the reasoning of Humphreys, J. The question, said Scott, L.J., is : When do arbitrators enter upon a reference ? " They enter on it," he said, " as soon as they have accepted their appointment and communicated with each other about the reference " (at p. 172). The court was therefore entitled under s. 5 of the Arbitration Act, 1889, to appoint an umpire.

# To-day and Yesterday.

## Legal Calendar.

**17 February.**—On the 17th February, 1816, the Court of Exchequer heard the case of Francis Cresswell, first mate of the " Thames," one of the great East Indiamen, accused of being concerned in smuggling Chinese silks. The quarter-master and two seamen told a remarkable story of how while the ship was in Chinese waters several small chests had been brought aboard and taken to his cabin and how on the homeward voyage he had received some men who came alongside off the Scilly Islands, bought silks from him and carried them away wrapped round their bodies under their clothes. Although the captain of the ship, the second mate and his own servant gave evidence for the defence and it was suggested that the whole charge was a " frame up," Cresswell was found guilty.

**18 February.**—On the 18th February, 1808, Henry Crabb Robinson was admitted to the Middle Temple. He had travelled abroad and studied at Jena before he decided to go to the English Bar. He underwent " a sort of examination " by the Treasurer of the Middle Temple, who only asked where he had been educated, and on being told at Jena, said that would do. In due time he was called and joined the Norfolk Circuit. His friend Charles Lamb, on being told of the receipt of his first brief, said : " I suppose you apostrophised it in Pope's line : ' Thou great first cause, least understood.' " Though he made some headway at the Bar, it is as a diarist that Robinson has lasting fame.

**19 February.**—On the 19th February, 1779, ten persons were sentenced to death at the Old Bailey : Naphtali Jacobs, a Jew, for stealing kitchen furniture from a Hoxton house ; Frederick Eustace, for stealing linen from the rooms over the Earl of Clarendon's stables ; Rowland Ridgley, for having coining instruments in his possession ; Robert Dare, for robbing his mistress of a gold slide set with diamonds ; John Richmond, for housebreaking ; James Wooley, for stealing twenty-four pairs of thread stockings ; John Huddey, for a burglary in Kensington ; William Germain, for horse stealing ; Thomas Norman, for robbing a woman of a quantity of linen in Hart Street ; and Sarah Hill, for stealing wearing apparel. Only the first three were actually executed.

**20 February.**—On the 20th February, 1595, Father Robert Southwell was condemned to death at Westminster under the statute which made the presence of a Jesuit in England treason.

**21 February.**—With the excitability of another nation Peter Ceppi conducted his courtship of Harriet Knightly to a sad end. He proposed to her and she refused him. He went to her room while she was in bed, locked the door, and sitting down in a chair " told her he had come to do her business, which she not understanding asked him to let her get out of the bed, which he did ; he then took out two pistols ; she went towards the door in order to get out ; he set his back against it ; she to appease him told him he might stay to breakfast." But the policy of appeasement availed her nothing and he shot and wounded her. At his trial he said that he was overcome with grief and love and meant to shoot himself in her presence, but he was sentenced to death at the Old Bailey on the 21st February, 1778.

**22 February.**—On the 22nd February, 1832, Colonel Elrington, of the 47th Regiment of Foot, appeared before a general court martial at Edinburgh Castle. There had been some trouble when a detachment of the regiment was marching from Edinburgh to Glasgow under Major Sadleir. At Bathgate, while the men were drawing their rations, some refused to accept them and loudly vociferated that they would not obey the major's order to do so. Two privates were arrested and the major sent a report to the colonel, who, however, completely ignored it and did nothing about the matter. Though the court acquitted him of gross neglect of duty it sentenced him to be admonished.

**23 February.**—In November, 1689, a lady of fashion was found mysteriously murdered in the bedroom of her Paris house. Circumstantial evidence told strongly against her steward, Lebrun, and he was condemned to death. On appeal sixteen of the twenty-two judges were for substituting an order that he should undergo the torture ordinary and extraordinary to extort a confession. They might as well have dismissed his appeal outright for he was so severely handled on the 23rd February, 1690, when the sentence was executed, that he died within a week still denying his guilt. A month later the real criminal was arrested at Sens, a discharged servant whose intimate knowledge of the household had enabled him to hide there for the purpose of robbbery and escape unsuspected.

THE WEEK'S PERSONALITY.

Even had he not won glory as a martyr for his faith, Father Robert Southwell would yet hold a high place in Elizabethan literature as a poet. Ben Jonson declared that he would willingly have destroyed many of his own works to have been able to claim the authorship of his "Burning Babe." His genuinely poetic vein found expression in great simplicity of language and a deep sincerity, and another writer spoke of his poems: "the English whereof as it is most proper, so the sharpness and light of wit is very rare in them." He was the son of a Norfolk gentleman and having been educated abroad in the old faith he obtained admission to the Society of Jesus, returning to England as a missionary in 1584, despite the laws which made his presence there *ipso facto* treasonable, he being an English born subject of the Queen and a Roman Catholic priest. Though constantly in the utmost peril, he zealously worked with tongue and pen for the reconversion of his country, the secret of his identity being well kept by numerous friends who were still loyal Catholics. In the end, however, his inevitable capture came in 1592. At his trial he impugned the justice of the law under which he was condemned. On the scaffold he expressed his loyalty to Elizabeth and perished courageously at the age of thirty-four.

HAVOC IN SOUTH SQUARE.

After a decent interval for caution it has now been publicly announced that during an air-raid early in January Gray's Inn's sixteenth century Hall was damaged by the blast of a heavy bomb which wrecked the south-east corner of South Square. The hurt to the Hall itself was fortunately superficial but No. 3 and No. 5, both more than two centuries old, were damaged beyond repair, while adjacent buildings, including the Library, remain in a condition more or less precarious, awaiting a final verdict on their state. For the symmetry of the Square it is a great pity that the old chambers have gone: but for its contents we could have better spared the newer Library. Part of it is an unconvincing Victorian mock antique clashing with the Elizabethan integrity of the Hall and with every other building in sight, its meretricious workmanship now unmasked, since in places what looked like solid blocks of stone have been dislodged and exposed as the flimsiest of facing. As for the new wing, in spite of the lavish praise with which it has lately been common form to greet almost any new building, there are those who have never conquered a feeling that it is not wholly harmonious to the Square, fitting in less well indeed than the thirty-five year old lecture rooms and common rooms. A wise and generous scheme of rebuilding, taking due account of the existing Georgian and Elizabethan, could give South Square as pleasant a prospect as any in the Inns of Court, particularly if it went with a judicious enlargement of the small unsatisfying grass plot on which Bacon's statue stood before the explosion cast him from his shattered plinth.

THE HALL.

It is well indeed that the Hall escaped destruction that time, for were it to disappear in the present tumult, the sum of £863 10s. 8d., which between 1556 and 1559 was sufficient for its "re-edifying," would hardly restore it to us. The valuable glass having been already removed to a place of safety, the chief damage suffered in January was to the tiles. The ancient roof beams stood the test, and even the lantern above is unshaken. This, though an 1826 innovation, blends well with the older part of the building. To get an idea of its predecessor one must go as far afield as Philadelphia, where the State House has a cupola designed by Andrew Hamilton, a member of Gray's Inn, and believed to have been inspired by the Hall's ancient crown.

## Reviews.

*Who's Who*, 1941. Demy 8vo. pp. 39 and 3510. London: A. & C. Black. Price 65s. net.

The 1941 edition of "Who's Who" is the ninety-third of the series. The volume contains autobiographies of the world's most prominent people, and has been brought up to date during the past year by the addition of many new personalities and many thousands of alterations to the existing entries. As a work of reference for the office this book is indispensable.

Mr. H. K. Newcombe, partner in the firm of Messrs. C. H. Newcombe and Pugh, solicitors, of Swansea, has been appointed clerk to the Gower Rural District Council, in succession to Mr. L. M. Pugh, who has been appointed clerk to the Swansea magistrates. Mr. Newcombe was admitted a solicitor in 1935, and Mr. Pugh in 1928.

## Notes of Cases.

### JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

**Canada Rice Mills, Ltd. *v.* The Union Marine and General Insurance Company, Ltd.**

Viscount Maugham, Lord Russell of Killowen, Lord Wright and Lord Porter. 24th September, 1940.

*Insurance (Canada)—Marine insurance—Damage to cargo of rice from necessity of closing ventilators owing to rough seas—Whether damage caused by "peril of sea."*

Appeal from a decision of the Court of Appeal of British Columbia, reversing a decision of the Supreme Court of that province (Robertson, J., sitting with a special jury).

The appellant company were insured by the respondent insurers against damage to a cargo of rice on a voyage in the vessel "Segundo" from Rangoon to their dock on the Fraser River, Canada. The jury found that during the voyage, between the 8th and 11th May, 1936, heavy weather necessitated prolonged shutting of the ventilators of the holds where the rice was stowed, with the result that it heated and suffered the damage in question. The company having recovered judgment against the insurers, the Court of Appeal reversed that decision and the company now appealed. (*Cur. adv. vult.*)

LORD WRIGHT, delivering the judgment of the Board, referred to the omission to ask the jury if the peril of the sea was the cause of the closing of the ventilators and hatches, and said that their lordships would feel justified, if it were necessary, in acting upon Ord. LVIII, r. 4, of the Rules of Court of British Columbia, which was identical with our R.S.C. Ord. LVIII, r. 4, and gave the Court of Appeal power to draw inferences of fact, give any judgment, or make any order which ought to have been made, and to receive further evidence. The jury had found that there were perils of the seas during the period while the ventilators were closed. What was wanting was the finding that there was not merely concurrence in time, but that the perils of the seas caused the closing. The connection was so obvious that, if necessary, the court was entitled to draw an inference of fact that the closing was so caused. The English rule had been discussed in *Paquin, Ltd.* v. *Beauclerk* [1906] A.C. 148, and *Mechanical and General Inventions Co. and Lehwess* v. *Austin* [1935] A.C. 346. In the present case the Court of Appeal in British Columbia had regarded themselves as precluded from going beyond a narrow reading of the findings of the jury by a decision of the House of Lords in *McGovern* v. *Nimmo*, 107 L.J.P.C. 82. That decision was, however, in an appeal from the Scotch Courts, where there was no rule corresponding to Ord. LVIII, r. 4. The decision in *McGovern* v. *Nimmo*, *supra*, could not in view of Ord. LVIII, r. 4, be applied to English or British Columbian appeals. The Court of Appeal, by a majority, had held that there was no evidence of perils of the seas, a conclusion, apparently, based on a view of the meaning of "perils of the seas." They had held, however, that, even if there were perils of the seas, they did not constitute the *causa proxima* for purposes of insurance law, because the *causa proxima* was the deliberate act of the master in closing the ventilators. Their lordships were unable to agree with that reasoning. As to the first question, whether on the evidence the jury were justified in finding that there was a peril of the sea, in British Columbia the law of marine insurance was now to be found in the Marine Insurance Act, R.S.B.C., 1936, Ch. 134, which was for all practical purposes the same as the English Marine Insurance Act, 1906, so that authorities under the latter Act were properly cited in respect of the former. Let it be assumed that the ventilation had not been closed, but that sea or spray had actually wetted the rice and caused the damage. The Court of Appeal held that there was no peril of the sea because the weather encountered was such as to be normally expected, and that there had been no weather bad enough to endanger the safety of the ship if the ventilators had not been closed. Those were not the true tests. His lordship referred to *Wilson, Sons & Co.* v. *Owners of the Cargo per the Xantho* (1887), 12 App. Cas. 503, at p. 509. In *Thames and Mersey Marine Insurance Co., Ltd.* v. *Hamilton, Fraser & Co.* (1887), 12 App. Cas. 484, at p. 502, Lord Macnaghten said that it was impossible to frame a definition of the words. In the opinion of Lord Halsbury in *Hamilton, Fraser & Co.* v. *Pandorf & Co.* (1887), 12 App. Cas. 518, any accident that should do damage by letting in sea into the vessel should be one of the risks contemplated. Where there was an accidental incursion of seawater into a vessel at a part of the vessel and in a manner where seawater was not expected to enter in the ordinary course of things, and there was consequent damage to the thing insured, there was *prima facie* a loss by perils of the seas. It was the fortuitous entry of the seawater which was the peril of the sea in such cases. The rush of seawater which but for the covering of the ventilators would have come into them and down to the cargo was in this case due to a storm which was sufficiently out of the ordinary to send seas or spray over the orifices of the ventilators. The jury were entitled to take a broad commonsense view of the whole position. How slight a degree of the accidental or unexpected would justify a finding of loss by perils of the sea was illustrated by *Mountain* v. *Whittle* [1921] 1 A.C. 615. It could not be maintained that where damage was caused by a storm even though its incidence or force was not exceptional, a finding of loss by perils might not be justified. There remained the second

question, whether damage caused, not by the incursion of seawater, but by action taken to prevent that incursion was a loss by perils of the seas. It was curious that there was no express decision on that point under a policy of marine insurance, but the question should be answered in the affirmative. The answer might be based on the view that, where the weather conditions so required, the closing of the ventilators was not to be regarded as a separate or independent cause, interposed between the peril of the sea and the damage, but as being such a mere matter of routine seamanship necessitated by the peril that the damage could be regarded as the direct result of the peril. His lordship referred to *The Thrunscoe* [1897] P. 301; 66 L.J.P. 172; and *Leyland Shipping Co., Ltd.* v. *Norwich Union Fire Insurance Society*, [1918] A.C. 350; 62 SOL. J. 307; and said that *causa proxima* in insurance law did not necessarily mean the cause last in time, but what was "in substance" the cause. The same rule had been reiterated by the House of Lords most strikingly in *Samuel and Co.* v. *Dumas* [1924] A.C. 431. The same result might be reached by holding that, though such a loss was not strictly recoverable as a loss by perils of the seas, it was within the general words "all other perils losses and misfortunes, etc." in the policy. His lordship referred to *Thames & Mersey Marine Insurance Co.* v. *Hamilton, Fraser & Co*, 12 App. Cas., at p. 501; *Butler* v. *Wildman* (1820), 3 B. & Ald. 398; *The Knight of St. Michael* [1898] P. 30; 67 L.J.P. 19; and *Becker Gray & Co.* v. *London Assurance Corporation* [1918] A.C. 101; 62 SOL. J. 35; and said that the correctness of those authorities had not been doubted, and that they (their lordships) thought them rightly decided. In the present case there was an actually operating peril of the sea. There was accordingly either a loss by perils of the seas or a loss within the general words. The appeal should be allowed and the judgment of the Supreme Court restored.

COUNSEL: *Valentine Holmes; Willink*, K.C., and *Cyril Miller*.
SOLICITORS: *Charles Russell & Co.; Gard, Lyell & Co.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

## APPEALS FROM COUNTY COURT.

### Higgins *v.* J. Lyons & Co., Ltd.

Clauson, Luxmoore and Goddard, L.JJ. 22nd January, 1941.

*Negligence—Breach of statutory duty—Yard giving access to place of work—Traffic in yard—No supervision of traffic—Factories Act*, 1937 (1 *Edw.* 8 *and* 1 *Geo.* 6, *ch.* 67), *s.* 26 (1).

Defendants' appeal from an order of Deputy Judge Seuffert, given at the West London County Court on 18th October, 1940.

The plaintiff at the material date was a typist in the employment of the defendants. On 20th July, 1939, having lunched in the cafeteria provided by the defendants in a different block of buildings from that in which she worked, she walked back under a covered way with another typist to a spot known as "Swiss Roll Dock" on her way back to work. When they came to a pillar flanking the entrance to Swiss Roll Dock, the plaintiff met with an accident. As she stepped off a curb preparatory to entering a courtyard which had to be crossed before she could reach her office, a trolley truck laden with 15 cwt. of flour and pushed by two men came at a rapid speed straight at the plaintiff. She failed in her effort to avoid it, fell and was injured. There was no supervision or regulation of traffic in the yard, which was a through way with several docks, into which and out of which vehicles, including the truck in question, passed. Two men were pushing the truck from behind in such a way as to be unable to see what was in front. The plaintiff claimed damages for negligence and/or breach of statutory duty under s. 26 (1) of the Factories Act, 1937. The defendants pleaded contributory negligence and alternatively pleaded the defence of common employment. Section 26 (1) of the Factories Act, 1937, provides: "There shall, so far as is reasonably practicable, be provided and maintained safe means of access to every place at which any person has at any time to work." The deputy county court judge, having visited the *locus in quo*, found that the truck was pushed in a negligent manner, and that the negligence was due largely to the lack of directions and instruction on the part of the defendants; that no proper system of supervision or control of traffic was adopted in the yard by the defendants; that by reason of the volume of traffic and the many directions in which the traffic travelled, the yard was permitted by the defendants to be a dangerous place; and that they wholly failed to take steps to provide and maintain safe means of access to the place where the plaintiff worked. He held that the defendants had been guilty of a breach of statutory duty and gave judgment for the plaintiff for £285 and costs. The defendants appealed.

CLAUSON, L.J., outlined the facts and said that it had been suggested, and he assumed correctly suggested, that if the men pushing the trolley had paid more attention to the circumstances and to the presence of the two young women, this accident would not have happened. It was admitted that the plaintiff and the persons pushing the lorry were in common employment. Accordingly mere negligence was not *ad rem*. But the plaintiff said that there had been a breach of s. 26 (1) of the Factories Act, 1937. The deputy county court judge found that the defendants had committed a breach of the Act. There was no evidence that they did. It was a perfectly simple position. There was a yard with a footpath round it. There was no trap and nothing wrong with the yard. Someone was using the yard negligently, but that fact alone did not justify the deputy county court judge in finding that there had been a breach of the subsection. The appeal must be allowed.

LUXMOORE, L.J., agreed, and GODDARD, L.J., agreed, and added that if the judgment were upheld every hall of every block of offices would be unsafe if there was a corridor leading from it. There would have to be a system of lights and mirrors to avoid collisions.

The appeal was allowed with the costs of the trial and the costs of the appeal, and it was ordered that judgment should be entered for the defendants with such costs. It was further ordered that if no application for leave to appeal was made within three weeks to the House of Lords, or if within that time leave to appeal should be refused, then the case should be remitted to the county court for workmen's compensation to be assessed.

COUNSEL: *Richard Edgedale; Herbert Malone.*
SOLICITORS: *W. H. Thompson; Kingsley Wood, Williams & Murphy.*

[Reported by MAURICE SHARE, Esq., Barrister-at-Law.]

### Read *v.* Gordon.

MacKinnon, Clauson and du Parcq, L.JJ. 24th January, 1941.

*Landlord and tenant—Rent restrictions—Cottage occupied by virtue of employment—Employment terminated—New agreement with new landlord—Rent and Mortgage Interest Restrictions (Amendment) Act*, 1933 (23 *& 24 Geo.* 5, *c.* 32), *s.* 3 (1) *and Sched. I* (*g*) (*i*).

Defendant's appeal from an order of His Honour Judge Lawson Campbell, made at Peterborough County Court on 10th December, 1940.

The respondent had claimed possession of a cottage which he alleged that the appellant held of him on a weekly tenancy at a rental of 5s. per week, in respect of which due notice to quit had been served on 30th September, 1940. He also claimed arrears of rent and mesne profits. The appellant claimed the protection of the Rent Restriction Acts. The facts were that about the year 1900 the appellant entered the employment of a Mr. Foot and worked for him on the terms that he was allowed to live in the cottage and was paid 16s. a week wages. The value of the occupation of the cottage was 5s. In 1905 Mr. Foot died and his business was sold to a Mr. Snow by Mr. Foot's executors. The appellant continued with Mr. Snow on the same arrangement for some thirty years after this. In 1935 on the death of Mr. Snow his executors brought the business to an end and arranged that the appellant should pay 5s. a week as rent for the cottage. The executors ceased to be the employers of the appellant or of anyone. They gave the appellant the rent book and the appellant found employment with other employers. For five years the appellant continued to occupy the cottage and to pay rent, but in 1940 Mr. Snow's executors sold the property of which the cottage formed part to the respondent. The respondent decided to re-start the business of furniture-storage which had been ended five years previously by Mr. Snow's executors. He accordingly gave the appellant notice to quit, as he wished to instal his own employee in the cottage.

The learned county court judge said that it was not disputed that an order for possession could not be made save under para. (g) (i) of the First Schedule to the Act of 1933, which provides: "The dwelling-house is reasonably required . . . and . . . (i) the tenant was in the employment of the landlord or a former landlord, and the dwelling-house was let to him in consequence of that employment and he has ceased to be in that employment." He said he had little difficulty in holding that the cottage was reasonably required by the plaintiff as a residence for a person engaged in his whole-time employment. It was clear that the defendant was in the employment of a former landlord and that the cottage was originally let to him by reason of that employment, and that he had ceased to be in that employment. He held that the material words in the paragraph were "was let," and that those words appeared to be satisfied if the house was at any time let. Moreover the indefinite article was used in specifying the landlord in whose employment the tenant must have been and this seemed to contemplate the case of a succession of landlords.

MACKINNON, L.J., said that the real issue was whether the plaintiff could successfully assert that the defendant was in the employment of the landlord or a former landlord, and the dwelling-house was let to him in consequence of that employment within para. (g) (i) of the First Schedule to the Act of 1933. The learned county court judge had found what on the facts he could not fail to find, that though originally it was let to Gordon by reason of his employment, in 1935 there was a new letting to Gordon. He went on to hold that the material words were "are let," and that those words appeared to be satisfied if the house was at any time let. In the somewhat similar case of *Lever Bros., Ltd.* v. *Caton*, 37 T.L.R. 664, that was the view taken by Bray, J., who said (at p. 665): "I think that we must go back to the original letting, which here was in consequence of the employment." Lush, J., did not accept that argument but reached the same result on the ground that in fact no new agreement was entered into, saying inferentially that if there had been a new agreement he would have been of the opinion that the appeal must be allowed. In the very similar case of *Murton* v. *Aldis*, 141 T.L.R. 168, a Divisional Court came

to a different conclusion on the facts and disapproved the reasoning of Bray, J., in *Lever Bros., Ltd.* v. *Caton*, *supra*, partly on the strength of *Bond* v. *Pettle* (*The Times*, 15th January, 1921). Lord Hewart quoted a sentence from the judgment of Lord Coleridge in *Bond* v. *Pettle*, *supra*, which put the whole point arising in that case and in the present case: "The question is whether the tenant at the crucial time, not at some other time, was a tenant in consequence of his employment." The question in this case was whether at the crucial time—namely, the date when the plaintiff issued his notice to quit—the defendant was a tenant in the employment of his landlord. Clearly he was not. He was a tenant in the employment of his former landlord. The question was whether the dwelling-house at the crucial time was let to him in consequence of the employment which he had with a former landlord. It was not. He was tenant by virtue of a new agreement. The plaintiff had failed to bring himself within the provisions of the First Schedule to the 1933 Act, and the defendant was entitled to the protection of s. 3 of the Act. The appeal would be allowed with costs.

CLAUSON, L.J., agreed, and added that if it were essential to consider it, he was not sure that one might not find that the crucial moment was the moment of the issue of the notice to quit, which leads to the right to apply to the county court.

MACKINNON, L.J., said that he agreed with this observation.

DU PARCQ, L.J., also agreed.

COUNSEL: *Geoffrey Howard* and *S. L. Elborne*: *Archibald Safford*.

SOLICITORS: *J. D. Langton & Passmore*, agents for *Mellows & Sons*, Peterborough: *J. Hunt*, Peterborough.

[Reported by MAURICE SHARE, Esq., Barrister-at-Law.]

## HIGH COURT—KING'S BENCH DIVISION.

### Southern *v.* Borax Consolidated, Ltd.

Lawrence, J. 16th October, 1940.

*Revenue—Income tax—Legal costs incurred by company in defending title to business premises—Deductible in computing profits.*

Appeal by case stated from a decision of Commissioners for the General Purposes of the Income Tax Acts.

The respondent company had a subsidiary company, which it was agreed with the Inland Revenue Commissioners should be treated as a branch company so that the subsidiary company's profits were included in those of the respondents in the computation of tax. In 1923 the respondents acquired land in the United States, possession of which was given to the subsidiary company which erected buildings upon it. The subsidiary paid no rent for the use of those premises. In 1929 the City of Los Angeles began proceedings against both companies, claiming that the respondents' title to the land was invalid, the land being alleged in fact to belong to the city. The companies defended the action, and after six years of litigation a new trial was ordered, the costs incurred by the subsidiary at that time amounting already to £6,249. The object of the city in bringing the action was to require the subsidiary to pay tolls for the use of the wharves which that company had erected. If the action were lost, the company would probably have to pay some $40,000 a year retrospectively as tolls. The respondents contended that the £6,249 was deductible in the computation of their profits because incurred by the subsidiary wholly for the purpose of their trade. The Crown contended that the action concerned the company's capital assets, and that the £6,249 was accordingly a capital expenditure. The Commissioners decided in favour of the company, and the Crown now appealed.

LAWRENCE, J., said that the Crown relied principally on *Inland Revenue Commissioners* v. *Scottish Central Electric Power Co.* [1931] S.C. (H.L.) 36, for their argument that the £6,249 was laid out not wholly for the purpose of the company's trade but in the interests of the company as owners of the land in question. Five tests were suggested by counsel for the Crown: Did the expense sought to be deducted relate to the main framework of the taxpayer's business (*Van den Bergs, Ltd.* v. *Clark* [1935] A.C. 431)? Did the taxpayer incur the expense in the capacity of trader or property owner (*Inland Revenue Commissioners* v. *Scottish Central Electric Power Co.*, *supra*)? Was the payment recurrent? Was it in connection with, or out of, fixed or circulating capital? Did it result in bringing into existence an asset for the enduring benefit of the trade? Before deciding the question whether the expense was attributable to capital or to revenue, he (his lordship) would decide whether it was wholly laid out for the purpose of the company's trade. The Commissioners had found that it was, and the *Scottish Case*, *supra*, was no authority for the proposition that it was impossible for the Commissioners to come to the conclusion that such an expense as that in question was wholly laid out for the purpose of the trade. While the majority of the noble lords in that case had based their opinions on the ground that the payment of owner's rates was one made *qua* owner and not *qua* trader, the decision was not conclusive with regard to land abroad not liable to tax under Sched. A. The ownership of land might in certain circumstances be as necessary for trade as a lesser interest: e.g., where the land could only be bought. The expenses which had been allowed as deductions in *Usher's Wiltshire Brewery, Ltd.* v. *Bruce* [1915] A.C. 433; 59 SOL. J. 144, were ones which had the effect of preserving the landlord's interests just as much as did the defence of an action infringing his title. As to the second question, the principle to be deduced from the cases was that, where a sum was laid out for the acquisition or improvement of a fixed capital asset, it was attributable to capital; but that, where no alteration in the capital asset was made by the payment, then it was attributable to revenue, being in substance a matter of maintenance. Here the only way in which the capital asset could be said to be altered was by the removal of the City of Los Angeles from the number of possible challengers of the company's title. He (his lordship) could not think that that made the expense attributable to capital. The company's title, which must be assumed to be good, remained the same. In *Granite Supply Association, Ltd.* v. *Kitton* (1905), 5 T.C. 168, a payment for carting materials from an old yard to a new one was held a capital payment as part of the cost of acquiring the new yard. *Dow* v. *Merchiston Castle School, Ltd.* (1921), 8 T.C. 149, was a case like the *Scottish Electric Case*, *supra*, but was otherwise consistent with the principle above stated. *Robert Addie & Sons' Collieries, Ltd.* v. *Inland Revenue Commissioners* [1924] S.C. 231, and *MacTaggart* v. *B. & E. Strump* [1925] S.C. 599, again, were cases of capital payments. The test laid down by Lord Cave in *Atherton* v. *British Insulated and Helsby Cables, Ltd.* [1926] A.C. 205 (bringing into existence of asset) did not apply here. The company had relied on *B. W. Noble, Ltd.* v. *Mitchell* [1927] 1 K.B. 719; 11 T.C. 372, at pp. 420, 421, and *Rhodesia Railways, Ltd.* v. *Collector of Income Tax, Bechuanaland Protectorate* [1933] A.C. 362, at p. 374; where a large expenditure on the renewal of rails was held not to be of the nature of capital. Here the legal expenses had not created a new asset but were incurred in the ordinary course of maintaining the company's assets. The appeal must be dismissed.

COUNSEL: *The Solicitor-General* (Sir William Jowitt, K.C.) and *R. P. Hills*; *Tucker*, K.C., and *Scrymgeour*.

SOLICITORS: *The Solicitor of Inland Revenue*; *Ashurst, Morris, Crisp & Co.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

### Morning Post, Ltd. *v.* George.

Lawrence, J. 18th October, 1940.

*Revenue—Income tax—Newspaper—Agreement by proprietors for joint publication with other newspaper in return for annual payment—Assessment as "literary profits"—Validity—Income Tax Act*, 1918 (8 & 9 *Geo. 5, c. 40*), *Sched. D, Case III.*

Appeal by case stated from a decision of the London Commissioners for the General Purposes of the Income Tax Acts.

Morning Post, Ltd., carried on the business of printing and publishing the *Morning Post*. In August, 1927, practically the whole of their share capital was bought by Daily Telegraph, Ltd., who paid a further lump sum for the staff facilities and all news and other services of the *Morning Post*. Morning Post, Ltd., had been trading at a loss for some time previously, and in September, 1937, the directors of that company agreed that from the 1st October, 1937, the *Morning Post* should be published jointly with the *Daily Telegraph* under the title "*Daily Telegraph and Morning Post*." Many features of the original *Morning Post* continued to appear in the joint newspaper, being contributed by the same persons. Morning Post, Ltd., later dismissed their staff, some receiving pensions for which Daily Telegraph, Ltd., provided the funds, others being absorbed by the latter company. The directors of Morning Post, Ltd., in December, 1937, agreed to accept a monthly payment from Daily Telegraph, Ltd., for so long as the newspapers should be published jointly, instead of the lump sum previously agreed on. The agreement between the two companies was to run for fourteen years with an option to Daily Telegraph, Ltd., to terminate it sooner or to continue it for a further seven years. It was provided that Morning Post, Ltd., were not to participate in the profits or bear any losses of the joint publication. The monthly payments were made without deduction of tax and were allowed as deductions in the computation of the profits of Daily Telegraph, Ltd., for income tax purposes. Morning Post, Ltd., having been assessed to income tax under Sched. D to the Income Tax Act under the heads "Literary Profits" and "Literary Royalties" in respect of monthly payments received under the agreement, appealed. They admitted that if they were not carrying on a trade assessable under Case I of Sched. D, they were assessable in respect of the payments under Case III of that Schedule; but they contended that their business of newspaper proprietors still existed; that the *Morning Post* was still being published by them although under a joint arrangement; that they retained the right to resume publication of the *Morning Post* at the termination of the agreement; and that they were therefore entitled to be assessed under Case I and so to carry forward and deduct their previous losses. It was contended for the Crown that the company were not carrying on in the material years a trade the profits of which were assessable under Case I; that the sums payable under the agreement were annual payments not payable out of profits or gains brought into charge, and therefore assessable under Case III so that previous losses could not be set off. The Commissioners decided in favour of the Crown, and the company now appealed.

LAWRENCE, J., said that the appellants had referred to cases under the Excess Profits Duty Act and the Corporation Profits Tax Act, namely, *Inland Revenue Commissioners* v. *Korean Syndicate, Ltd.* [1921] 3 K.B. 258; 12 T.C. 181; *Inland Revenue Commissioners* v. *The South Behar Railway Co., Ltd.* [1925] A.C. 476; 69 SOL. J. 379; and *Inland Revenue Commissioners* v. *The Budderpore Oil Co., Ltd.* (1921), 12 T.C. 467, in all of which cases it was held that the companies and syndicates in question were carrying on a trade or business within the meaning of those Acts, although they were not actively operating the concessions or the railway themselves, but were receiving sums of money or royalties for the operation of the concessions or railway by other persons. In all those cases, however, the words of the Acts in question were wider than those used in the Income Tax Acts. Those cases did not afford much assistance in construing the words of the Income Tax Acts. Counsel had also referred to various rules in the Income Tax Acts themselves in which the word "business" was used, it was said, synonymously with the word "trade," namely, r. 12 of the Rules applicable to Cases I and II of Sched. D, and r. 13, s. 29, of the Finance Act, 1927, and s. 27 of the Finance Act, 1938. It was true that in some of those enactments the word "business" was used in a way which appeared equivalent to "trade," but in many, if not in all, cases the word "business" appeared to be used as covering matters dealt with in both Case I and Case II, namely, "trade, profession or vocation." There was nothing in the rules which made it right to apply the decisions in the cases referred to as decisive of the meaning of "business" here. In his opinion the appellants were not carrying on a trade within the meaning of Case I as defined by s. 237 after the 1st October, 1937. Their only activity was to receive the covenanted sum. There was no evidence upon which the Commissioners could have found that the appellants were carrying on the same trade after as before the 1st October, 1937. They had been both proprietors and publishers of the *Morning Post* newspaper; for the time being they had ceased to be anything more than its proprietors. The appeal would be dismissed.

COUNSEL: *Tucker*, K.C., and *Mustoe*; *The Solicitor-General* (Sir William Jowitt, K.C.) and *R. P. Hills*.

SOLICITORS: *Slaughter & May*; *The Solicitor of Inland Revenue*.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

## PROBATE, DIVORCE AND ADMIRALTY DIVISION.

### Frampton *v.* Frampton and Bushell.

20th December, 1940.

*Divorce—Wife's confession that pregnancy was due to co-respondent—Rule in* Russell *v.* Russell*—Admissibility where no evidence of non-access.*

Husband's petition for a decree *nisi* of divorce on the ground of adultery. The marriage took place on 10th September, 1932, and owing to the respondent's association with the co-respondent, the petitioner left her in September, 1938, and a deed of separation was executed. The only evidence of adultery was an admission by the respondent to the petitioner at the beginning of 1939 that the co-respondent was the father of the child whom she was expecting. The child was born on 30th May, 1939. She made similar statements in an application to enter the institution where the child was born and also to a public assistance officer.

HODSON, J., referred to *Russell* v. *Russell* [1924] A.C. 687, and *Warren* v. *Warren* [1925] P. 107, and said that the headnote in the latter case stated: "A wife's admission that she had committed adultery, even if accompanied by a statement of her belief that a child, subsequently born, was the result of her adultery, cannot bastardise the child without evidence of the non-access of the husband. The confession of the wife, therefore, that she has committed adultery is admissible as evidence in a suit for divorce so long as she does not assert that the husband could have had no access at the time of conception." In that case there were apparently other admissions of adultery by the wife besides statements by her that her pregnancy was due to intercourse with a man other than her husband. Swift, J., said: "However many men she has had connection with nothing can bastardise the child unless non-access of, or non-intercourse by, the husband can be proved. Her evidence and proof of her conduct and statements are admissible unless and until it is sought to prove by these means non-access or non-intercourse." The decision of Swift, J., was followed by the Divisional Court in *Roast* v. *Roast* [1938] P. 8, and by the Court of Appeal in *Ettenfield* v. *Ettenfield* [1940] P. 56. His lordship was quite satisfied that the statements made in this case, standing alone as they did, were quite sufficient to rest a conviction of adultery on them. There would be a decree *nisi*.

COUNSEL: *S. Lyttleton Howes* (for *J. R. Barington Jones*, on war service).

SOLICITORS: *Kingsford, Dorman & Co.*, for *Kingsford, Flower & Pain*, Ashford, Kent.

[Reported by MAURICE SHARE, Esq., Barrister-at-Law.]



# Obituary.

MR. J. H. S. BUTT.

Mr. John Henry Steuart Butt, late senior partner in the firm of Messrs. Eland, Nettleship & Butt, solicitors, of 26, Lincoln's Inn Fields, W.C.2, died on Wednesday, 12th February, at the age of seventy-five. Mr. Butt was admitted a solicitor in 1888.

MR. H. GODWIN.

Mr. Harry Godwin, a former partner in the firm of Messrs. Rooks, Wales, Godwin & Galsworthy, solicitors, of 16, King Street, Cheapside, E.C.2, and formerly a member of the Middlesex County Council, died on Monday, 17th February, at the age of seventy-eight. Mr. Godwin was admitted a solicitor in 1884.

MR. J. H. JONES.

Mr. J. H. Jones, solicitor, of Messrs. Jones, Blakeway and Jones, solicitors, of Gloucester, died on Thursday, 30th January, at the age of eighty-eight. Mr. Jones was admitted a solicitor in 1874. He took a leading part in matters of public interest, particularly in everything connected with agriculture.

# Books Received.

*The New Democratic Freedom and The Democratic Freedomain.* By "NORTH-EAST." 1941. pp. 25. Bishop Auckland: The Starluk Company, Ltd. Price 1s. net.

*Annual Register of Charities and Public Institutions*, 1941. 48th Edition, Demy 8vo. pp. 492 (including Index). London: Longmans, Green & Co., Ltd.; Charity Organisation Society. Price 8s. 6d. net.

*Fire Watching.* By JOHN BURKE, Barrister-at-Law. pp. 16 (including Index). London: Hamish Hamilton, Ltd. Price 6d. net.

*Loose-leaf War Legislation.* 1940–41. Edited by JOHN BURKE, Barrister-at-Law. Parts 5 and 6. London: Hamish Hamilton, Ltd.

*Willis's Workmen's Compensation.* By W. ADDINGTON WILLIS and R. MARVEN EVERETT, Barristers-at-Law. Thirty-third Edition, 1941. pp. clii, 1128 and (Index) 101. London: Butterworth & Co. (Publishers), Ltd. Price 21s., plus 7d. postage.

# War Legislation.

(*Supplementary List, in alphabetical order, to those published week by week in* THE SOLICITORS' JOURNAL *from the 16th September, 1939, to the 15th February, 1941.*)

STATUTORY RULES AND ORDERS, 1941.

E.P. 142. **Acquisition of Securities** (No. 2) Order, February 7, 1941.

No. 155. **Allied Forces** (Application of Acts to Colonies, etc.) (No. 1) Order in Council, January 15, 1941.

E.P. 179. **Bitter Oranges** (Maximum Prices) Order, February 12, 1941.

E.P. 150. **Bread** (Current Prices) Order, February 3, 1941.

E.P. 163. **Civil Defence Duties** (Exemption Tribunals) Order, February 6, 1941.

E.P. 147. **Control of Cotton Industry** (No. 17) Order, February 3, 1941.

E.P. 168. Control of the Cotton Industry (No. 18) Order, February 7, 1941.

E.P. 169. Control of the Cotton Industry (Agents' Commissions) Direction (No. 1), February 8, 1941.

E.P. 171. Control of Dyestuffs Order, February 10, 1941.

E.P. 152. Control of Mercury (No. 5) Order, February 5, 1941.

E.P. 160. Control of Paper (No. 31) Order, February 6, 1941.

E.P. 159. Control of Wool Wastes (No. 1) Order, February 6, 1941.

E.P. 166. Control of Wool (No. 15) Order, February 7, 1941.

E.P. 167. Control of Wool-Rags (No. 1) Order, February 6, 1941.

E.P. 177. **Defence** (Parliamentary Under-Secretaries) Regulations, 1940. Order in Council, February 8, 1941, amending Regulation 2.

No. 135. **East of Birmingham-Birkenhead Trunk Road** (Wolverhampton and Tettenhall By-Pass) Order, January 11, 1941.

E.P. 148. **Encouragement of Exports** (Wool Textiles) Order, February 3, 1941.

No. 173. **Export of Goods** (Control) (No. 4) Order, February 12, 1941.

E.P. 144. **Feeding Stuffs** (Rationing) Order, 1941. General Licence and Directions, February 1, 1941.

E.P. 170. **Fire Precautions** (Access to Premises) Order, February 7, 1941.

E.P. 165. **Invert Sugar** (Maximum Prices) (No. 2) Order, 1940. Amendment Order, February 6, 1941.

E.P. 154/L.3. **Juvenile Courts** (Metropolitan Police Court Area) Order, January 27, 1941.
E.P. 153. **Lighting** (Restrictions) (Amendment) Order, February 4, 1941.
E.P. 161. Lighting (Restrictions) (Amendment) (Northern Ireland) Order, February 4, 1941.
E.P. 143. **Limitation of Supplies** (Miscellaneous) (No. 5) Order, 1940. General Licence, January 17, 1941.
No. 97. **Road Vehicles (Licensing)** (Leave Permit) Regulations, January 15, 1941.
E.P. 141. **Securities** (Restrictions and Returns) (No. 1) Order, February 7, 1941.
No. 79. **Trading with the Enemy** (Specified Persons) (Amendment) (No. 2) Order, February 4, 1941.
E.P. 140. **Wear Navigation and Sunderland Corporation Quay** (Increase of Charges) Order, January 15, 1941.
No. 162. **Weights and Measures** (Sand and Ballast) (Amendment) Regulations, January 30, 1941.
No. 164. **Wild Birds Protection** (Administrative County of Somerset) Amending Order, February 1, 1941.

[E.P. indicates that the Order is made under Emergency Powers.]

STATIONERY OFFICE.

**Statutory Rules and Orders, 1941, List of,** Issued during January, 1941 (including certain Orders registered under the 1940 series but issued subsequent to December 31, 1940).

Copies of the above S.R. & O.'s, etc., can be obtained through The Solicitors' Law Stationery Society, Ltd., 22, Chancery Lane, London, W.C.2, and Branches.

# Parliamentary News.

## PROGRESS OF BILLS.

### ROYAL ASSENT.

The following Bill received the Royal Assent on the 12th February :—
Consolidated Fund (No. 1).

### HOUSE OF LORDS.

Ministry of Health Provisional Order (Shipley) Bill [H.C.]
Read First Time. [12th February.

### HOUSE OF COMMONS.

Reported, with Amendments. [12th February.
Determination of Needs Bill [H.C.].
Read Second Time. [13th February.
Great Western Railway (Variation of Directors' Qualification) Bill [H.C.].
Read Second Time. [18th February.
House of Commons Disqualification (Temporary Provisions) Bill [H.C.].
Read First Time. 18th February.
War Damage Bill [H.C.].

# Legal Notes and News.

### Professional Announcements.

(2s per line.)

ERNEST BEVIR & SON, owing to the bombing of their London office at 4, York Buildings, have transferred most of their practice to their Hendon office at 200, Brent Street, Hendon, N.W.4, Telephone Hendon 1124/5. High Court matters will be dealt with from their office at 28, New Bridge Street, E.C., Telephone Central 3411.

The Board of Trade is making a fresh drive to speed up both payments on account and final settlement of claims under the commodity insurance scheme of the War Risks Insurance Act. Within the next few days directions prepared by the Board showing how this may be done are to be sent through the Board's agents—the insurance companies and Lloyds, who issue the policies—to every trader in the country whose stocks are insured under the scheme. About 250,000 traders are insured. Meanwhile, the Board calls attention to their readiness to facilitate prompt payments on account of claims where from any cause final assessment may be protracted or a trader is likely to suffer hardship from lack of financial means pending final assessment and settlement. Traders who have already sent full particulars of their claims to their insurance companies or Lloyds and wish to obtain payment on account are invited to apply direct to the Board's assessor dealing with the claim. Where completed particulars of claims have not been given a trader desiring payment on account should write to the agent—the insurance company or Lloyds—through whom the policy was issued. No special form is needed, but the policy-holder should state (*a*) the address of premises where loss occurred; (*b*) date and cause of loss; (*c*) nature of goods; (*d*) estimated amount of loss allowing for salvage; (*e*) grounds of application for payment in advance of final settlement.

# Court Papers.

## SUPREME COURT OF JUDICATURE.

ROTA OF REGISTRARS IN ATTENDANCE ON

| DATE. | EMERGENCY ROTA. | APPEAL COURT No. I. | MR. JUSTICE FARWELL. |
|---|---|---|---|
| | Mr. | Mr. | Mr. |
| Feb. 24 | More | Andrews | Jones |
| ,, 25 | Blaker | Jones | Hay |
| ,, 26 | Andrews | Hay | More |
| ,, 27 | Jones | More | Blaker |
| ,, 28 | Hay | Blaker | Andrews |
| Mar. 1 | More | Andrews | Jones |

| | GROUP A. | | GROUP B. | |
|---|---|---|---|---|
| | MR. JUSTICE BENNETT. | MR. JUSTICE SIMONDS. | MR. JUSTICE UTHWATT. | MR. JUSTICE MORTON. |
| | Non-Witness. | Witness. | Non-Witness. | Witness. |
| | Mr. | Mr. | Mr. | Mr. |
| Feb. 24 | Blaker | Andrews | Hay | More |
| ,, 25 | Andrews | Jones | More | Blaker |
| ,, 26 | Jones | Hay | Blaker | Andrews |
| ,, 27 | Hay | More | Andrews | Jones |
| ,, 28 | More | Blaker | Jones | Hay |
| Mar. 1 | Blaker | Andrews | Hay | More |

# Stock Exchange Prices of certain Trustee Securities.

Bank Rate (26th October, 1939) 2%. Next London Stock Exchange Settlement, Thursday, 6th March, 1941.

| | Div. Months. | Middle Price 19 Feb. 1941. | Flat Interest Yield. | † Approximate Yield with redemption |
|---|---|---|---|---|
| | | | £ s. d. | £ s. d. |
| **ENGLISH GOVERNMENT SECURITIES.** | | | | |
| Consols 4% 1957 or after | FA | 110½ | 3 12 5 | 3 3 1 |
| Consols 2½% | JAJO | 77½ | 3 4 6 | — |
| War Loan 3% 1955–59 | AO | 101½ | 2 19 3 | 2 17 9 |
| War Loan 3½% 1952 or after | JD | 103⅝ | 3 7 8 | 3 2 11 |
| Funding 4% Loan 1960–90 | MN | 113½ | 3 10 6 | 3 1 1 |
| Funding 3% Loan 1959–69 | AO | 99½ | 3 0 4 | 3 0 6 |
| Funding 2¾% Loan 1952–57 | JD | 98½ | 2 15 10 | 2 17 4 |
| Funding 2½% Loan 1956–61 | AO | 92½ | 2 14 1 | 3 0 1 |
| Victory 4% Loan Average life 20 years | MS | 111 | 3 12 1 | 3 4 10 |
| Conversion 5% Loan 1944–64 | MN | 108½ | 4 12 6 | 2 3 4 |
| Conversion 3½% Loan 1961 or after | AO | 104½ | 3 7 0 | 3 3 10 |
| Conversion 3% Loan 1948–53 | MS | 101⅛ | 2 19 0 | 2 14 0 |
| Conversion 2½% Loan 1944–49 | AO | 99⅛ | 2 10 1 | 2 10 8 |
| National Defence Loan 3% 1954–58 | JJ | 101½ | 2 19 3 | 2 17 9 |
| Local Loans 3% Stock 1912 or after | JAJO | 90 | 3 6 8 | — |
| Bank Stock | AO | 341½ | 3 10 3 | — |
| Guaranteed 3% Stock (Irish Land Acts) 1939 or after | JJ | 91 | 3 5 11 | — |
| Guaranteed 2¾% Stock (Irish Land Act, 1903) | JJ | 84½ | 3 5 1 | — |
| Redemption 3% 1986–96 | AO | 94⅝ | 3 3 6 | 3 4 3 |
| Sudan 4½% 1939–73 Average life 18½ years | FA | 109 | 4 2 7 | 3 16 3 |
| Sudan 4% 1974 Red. in part after 1950 | MN | 107 | 3 14 9 | 3 2 8 |
| Tanganyika 4% Guaranteed 1951–71 | FA | 109 | 3 13 5 | 2 18 11 |
| Lon. Elec. T. F. Corpn. 2½% 1950–55 | FA | 93 | 2 13 9 | 3 1 9 |
| **COLONIAL SECURITIES.** | | | | |
| *Australia (Commonwealth) 4% 1955–70 | JJ | 104 | 3 16 11 | 3 12 7 |
| Australia (Commonwealth) 3½% 1964–74 | JJ | 94 | 3 9 2 | 3 11 3 |
| Australia (Commonwealth) 3% 1955–58 | AO | 94 | 3 3 10 | 3 9 1 |
| *Canada 4% 1953–58 | MS | 110 | 3 12 9 | 3 1 3 |
| New South Wales 3½% 1930–50 | JJ | 99 | 3 10 8 | 3 12 6 |
| New Zealand 3% 1945 | AO | 99 | 3 0 7 | 3 5 6 |
| Nigeria 4% 1963 | AO | 107 | 3 14 9 | 3 11 1 |
| Queensland 3½% 1950–70 | JJ | 100 | 3 10 0 | 3 10 0 |
| *South Africa 3½% 1953–73 | JD | 102 | 3 8 8 | 3 6 0 |
| Victoria 3½% 1929–49 | AO | 101 | 3 9 4 | — |
| **CORPORATION STOCKS.** | | | | |
| Birmingham 3% 1947 or after | JJ | 83½ | 3 11 10 | — |
| Croydon 3% 1940–60 | AO | 93 | 3 4 6 | 3 10 2 |
| Leeds 3¼% 1958–62 | JJ | 96 | 3 7 8 | 3 10 5 |
| Liverpool 3½% Redeemable by agreement with holders or by purchase | JAJO | 97 | 3 12 2 | — |
| London County 3% Consolidated Stock after 1920 at option of Corporation | MJSD | 85½ | 3 10 2 | — |
| *London County 3½% 1954–59 | FA | 102 | 3 8 8 | 3 5 11 |
| Manchester 3% 1941 or after | FA | 83 | 3 12 3 | — |
| Manchester 3% 1958–63 | AO | 95 | 3 3 2 | 3 6 2 |
| Metropolitan Consolidated 2½% 1920–49 | MJSD | 98 | 2 11 0 | 2 15 1 |
| Met. Water Board 3% "A" 1963–2003 | AO | 86½ | 3 9 4 | 3 10 9 |
| Do. do. 3% "B" 1934–2003 | MS | 89 | 3 7 5 | 3 8 6 |
| Do. do. 3% "E" 1953–73 | JJ | 92 | 3 5 3 | 3 8 3 |
| Middlesex County Council 3% 1961–66 | MS | 92 | 3 5 3 | 3 9 9 |
| *Middlesex County Council 4½% 1950–70 | MN | 105 | 4 5 9 | 3 18 0 |
| Nottingham 3% Irredeemable | MN | 82 | 3 13 2 | — |
| Sheffield Corporation 3½% 1968 | JJ | 101 | 3 9 4 | 3 8 10 |
| **ENGLISH RAILWAY DEBENTURE AND PREFERENCE STOCKS.** | | | | |
| Great Western Rly. 4% Debenture | JJ | 104½ | 3 16 7 | — |
| Great Western Rly. 4½% Debenture | JJ | 113¾ | 3 19 4 | — |
| Great Western Rly 5% Debenture | JJ | 122½ | 4 1 8 | — |
| Great Western Rly. 5% Rent Charge | FA | 118 | 4 4 9 | — |
| Great Western Rly. 5% Cons. Guaranteed | MA | 114 | 4 7 9 | — |
| Great Western Rly. 5% Preference | MA | 89 | 5 12 4 | — |

*Not available to Trustees over par.
† In the case of Stocks at a premium, the yield with redemption has been calculated at the earliest date; in the case of other Stocks, as at the latest date.